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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 ALFONSO MOUZON,

11 Petitioner,

12 v.

13 BEN MCLAIN, Executive Director,

14 Respondent.

No. C 07-4070 MMC (PR)

**ORDER OF DISMISSAL;  
GRANTING LEAVE TO PROCEED  
IN FORMA PAUPERIS**

**(Docket No. 3)**

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16 On August 8, 2007, petitioner, a civil detainee confined at Coalinga State Hospital and  
17 awaiting civil commitment proceedings, filed the above-titled petition for a writ of habeas  
18 corpus.<sup>1</sup> Petitioner is proceeding pro se and has applied for leave to proceed in forma  
19 pauperis.

20 According to the allegations in the petition, on August 21, 2006, the State of  
21 California filed a petition to begin civil commitment proceedings against petitioner pursuant  
22 to California's Sexually Violent Predators Act ("SVPA"). See Cal. Welfare & Inst. Code  
23 ("WIC") §§ 6600, et seq. Thereafter, a probable cause hearing was held on the petition in  
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25 <sup>1</sup>Petitioner filed his petition on a form for petitions brought pursuant to 28 U.S.C. §  
26 2254, which statute provides habeas corpus jurisdiction over persons held in custody  
27 pursuant to the judgment of a state court. See 28 U.S.C. § 2254(a). On August 28, 2007,  
28 petitioner filed additional facts and argument in support of the petition; in such additional  
filing he makes clear that because he is not in custody pursuant to a state court judgment, he  
is bringing his petition under 28 U.S.C. § 2241(c)(3), which provides habeas corpus  
jurisdiction over any person held in custody in violation of the Constitution or laws or  
treaties of the United States. See 28 U.S.C. § 2241(c)(3).

Alameda County Superior Court. On November 3, 2006, the superior court found probable cause existed to hold petitioner for civil commitment proceedings under the SVPA. The California Court of Appeal summarily denied petitioner's challenge to the probable cause determination, and the California Supreme Court denied review. Petitioner then filed the instant petition, in which he claims the probable cause determination violated his federal constitutional right to due process because the superior court wrongly found a 1983 Florida conviction could be used as proof of one of the two prior sexually violent offenses required to qualify petitioner as a sexually violent predator under the SVPA. See WIC § 6600(a)(2).

Under principles of comity and federalism, a federal court should not interfere with ongoing state criminal proceedings by granting injunctive or declaratory relief absent extraordinary circumstances. See Younger v. Harris, 401 U.S. 37, 43-46 (1971); see also Carden v. Montana, 626 F.2d 82, 84 (9th Cir.1980) (applying Younger to habeas petition challenging state pretrial proceedings). The policies underlying Younger abstention are fully applicable to noncriminal judicial proceedings when important state interests are involved, and when the state proceedings afford an adequate opportunity to raise constitutional claims. See Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982); id. at 434-37 (finding Younger abstention applicable to state bar disciplinary proceedings where important state interest of regulating attorney conduct involved, constitutional claims could be addressed in state proceedings, and no extraordinary circumstances warranted federal intervention).

Here, petitioner is in custody awaiting the completion of state civil commitment proceedings that will determine whether he will be sentenced to a term of confinement under the SVPA. Applying the principles discussed in Middlesex, the Court finds Younger abstention is applicable to the proceedings pending against petitioner: the proceedings are judicial in nature,<sup>2</sup> they involve important state interests concerning the state's regulation of

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<sup>2</sup>The superior court presides over commitment proceedings, and individuals facing commitment are entitled to a jury trial and the appointment of counsel. See WIC §§ 6601, 6603.

1 sexually violent offenders, and they afford petitioner an opportunity to raise his constitutional  
2 claims. Moreover, petitioner has made no showing that extraordinary circumstances exist  
3 that would require federal intervention. See Younger, 401 U.S. at 46 (holding extraordinary  
4 circumstances exist when there is danger of great and immediate irreparable loss; holding  
5 cost, anxiety and inconvenience of defending against good-faith criminal prosecution not  
6 extraordinary circumstance requiring federal intervention); see also Carden, 626 F.2d at 84  
7 (holding federal intervention appropriate only under “special circumstances” such as proven  
8 harassment, bad faith prosecution, or other extraordinary circumstances resulting in  
9 irreparable injury).

10 Accordingly, the petition is hereby DISMISSED. The dismissal is without prejudice  
11 to petitioner’s filing a new federal habeas petition once his state civil commitment  
12 proceedings are completed and he has exhausted state court remedies concerning all claims  
13 he wishes to raise in federal court.

14 In light of petitioner’s lack of funds, the application to proceed in forma pauperis is  
15 hereby GRANTED.<sup>3</sup>

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20 <sup>3</sup>On August 8, 2007, the same date that petitioner filed his application to proceed in  
21 forma pauperis, the Court notified petitioner that his application was deficient because it did  
22 not include a “Certificate of Funds in Prisoner’s Account,” completed and signed by an  
23 authorized officer at the prison, and a copy of petitioner’s prisoner trust account statement  
24 showing transactions for the last six months. In said notice, petitioner was advised that his  
25 failure to pay the filing fee or, alternatively, to file a completed in forma pauperis  
26 application, within thirty days, would result in dismissal of his action. On August 28, 2007,  
27 petitioner responded to the notice by asserting that, because he is an involuntary civil  
28 detainee, he is not required to provide the requested documentation. Petitioner is correct that  
in the Ninth Circuit the financial reporting and fee installment requirements imposed by the  
Prisoner Litigation Reform Act, see 28 U.S.C. §§ 1915(a)(2),(b), apply only to “prisoners,”  
i.e., individuals who, at the time they seek to file their civil actions, are detained as a result  
of being accused of, convicted of, or sentenced for criminal offenses. Page v. Torrey, 201  
F.3d 1136, 1139-40 (9th Cir. 2000). Individuals with civil commitments pursuant to the  
SVPA are not “prisoners” within the meaning of 28 U.S.C. § 1915. Id. Accordingly,  
because petitioner is detained under the SVPA, he is not required to file additional  
documents in support of his in forma pauperis application.

1 This order terminates Docket No. 3.

2 The Clerk shall close the file.

3 IT IS SO ORDERED.

4 DATED: November 29, 2007

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6 MAXINE M. CHESNEY  
7 United States District Judge  
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